The lower limbs are flexed at the knee and hip joints and are in a state of intermittent spasms. As a result of his injury the plaintiff is reduced to such a state of helplessness that he is unable to perform the simplest function independently of aid and attention. His life expectation has been reduced by 20 years. His disabilities are permanent and he certainly faces a dreary prospect for the rest of his life.

The assessment of general damages is always a perplexing problem particularly so in this case as, apart from the case of *Quek Poh Ser & Anor.* v. *Jhagir Singh,*[1] there is hardly any comparable case which could serve as a guide. In that case a sum of $100,000 was awarded for a less serious injury which did not involve, as in the instant case, the paralysis of both hands and forearms. In arriving at an estimate there are factors which have to be taken into account which cannot be assessed in terms of money. The plaintiff has to be compensated somehow for the loss of earning capacity and the amenities of life during his remaining life expectancy. Taking all the relevant matters into consideration, I think that a sum of $110,000 would be an appropriate figure for general damages being a sum of $70,000 for loss of amenities and $40,000 for loss of earnings.

I assess the special damages as follows:—

Loss of clothing	$ 35.00
Loss of text book	5.00
Transport for parents to hospital	100.00
Loss of allowance as student teacher	1,305.00
For services of an attendant	2,400.00
	$3,845.00

There will be judgment for the plaintiff in the sum of $113,845 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; N. Ramachandran.*

RE LEE MOEY CHYE, DECD.

[O.C.J. (Azmi J.) October 31, 1965]

[J.B. — Originating Summons No. 62 of 1965]

Wills — Trusts — Whether void as infringing the rule against perpetuities or for uncertainty — Trust impracticable of performance.

In this case the testator after making some bequests directed in his will as follows:— "The remaining fifteen shares and the money in cash under my name shall be reserved as the ancestral property of my family. The money in cash must be remitted back to the fatherland (China) in order to form ancestral property. If and when my property is disposed of (sold), the value thereof must be remitted back to the fatherland (China) in order to form ancestral property".

The plaintiffs sought by originating summons a declaration that upon the true construction of the clause, the trust declared was (a) invalid as infringing the rule against perpetuities; (b) void for uncertainty; or (c) failed by reason that the trust declared therein is impracticable of performance.

Held: (1) as the trust was to be carried out in a foreign country namely China, the objection that the trust in this case was invalid according to the law in Singapore as infringing the rules against perpetuities was immaterial and it must therefore fail;

(2) the trust in this case was not void for uncertainty because the objects of the trust and the persons to be benefited by the trust were expressly designated;

(3) it was impracticable to send money to China because of exchange control restrictions and therefore the trust failed on the ground that it was impracticable of performance;

(4) the residuary estate should devolve as upon an intestacy and there should be an inquiry as to who should benefit under that intestacy.

Cases referred to:—

(1) *Choa Choon Neo* v. *Spottiswoode* (1896), 1 Ky. 216.

(2) *Yeap Cheah Neo* v. *Ong Cheng Neo* (1875), L.R. 6 P.C. 381.

(3) *Ng Eng Kiat* v. *Goh Lai Mui & others* [1940] M.L.J. 145.

(4) *Duncan* v. *Lawson* L.R. 41 Ch.D. 394 at p. 396.

(5) *Fordyce* v. *Bridges* (1847), 1 H.L. Cas. 1.

ORIGINATING SUMMONS.

K. C. Chan for the plaintiffs.

Y. R. Jumabhoy for the defendants.

Cur. Adv. Vult.

Azmi J.: This is an application by way of an originating summons for a declaration that upon the true construction of a clause in the will of Lee Moey Chye also spelt as Lee Bou Chai, the trust declared under the clause is:

(a) invalid as infringing the rules against perpetuities; or

(b) void for uncertainty; or

(c) fails by reason that the trust declared therein is impracticable of performance.

The clause in question reads as follows:

"The remaining fifteen shares and the money in cash under my name shall be reserved as the ancestral property of my family. The money in cash must be remitted back to the fatherland (China) in order to form ancestral property. If and when my property is disposed of (sold), the value thereof must be remitted back to the fatherland (China) in order to form ancestral property."

The facts are as follows. The deceased, Lee Moey Chye, left some property which consisted wholly of rubber land and he also left a will.

Under that will the testator divided his rubber land into 25 shares out of which he bequeathed 10 shares to certain named persons,

and the remaining 15 shares and any money in cash be reserved as the ancestral property of his family. He also directed that the 15 shares be sold and remitted to China for the same purpose.

The rubber land comprised of 43/60 undivided shares held under Johore Grant No. 496.

The land was subsequently divided and six fresh titles were issued by the Government, one of them is Johore Certificate of Title No. 6951. An order of court was subsequently obtained for the sale of the land held under this title. It was sold for $81,081. Out of this sum $48,059.40 has been deposited in court as a sum equivalent to 15 out of 25 shares of the whole estate, and it is in reference to this money that this application is made.

It would be seen that although under the will the deceased left 15 out of 25 shares to be held for the purpose of this trust, there was a direction by him that these 15 shares be sold.

I will now refer to the first ground under which Mr. Chan asked me to declare that the trust was invalid as infringing the rule against perpetuities.

In support Mr. Chan cited me: (i) *Choa Choon Neo* v. *Spottiswoode* [1] and (ii) *Yeap Cheah Neo* v. *Ong Cheng Neo.*[2]

It is not disputed that the English law known as the rule against perpetuities is the law of this country.

In the case of *Choa Choon Neo*, the deceased devised certain houses and land in Singapore and Malacca and also his residuary estate and directed that the rent and profits of this land should be expended on certain ceremonies called "sinchew". It was held that that direction is void as being in perpetuity and not in charity.

Mr. Jumabhoy, however, cited me the case of *Ng Eng Kiat* v. *Goh Lai Mui & Ors.*[3] In this case a Chinese testator, by one of the trusts in his will, directed his executors to apply 2/9th of the net proceeds of all his estate (except property in China) for the purchase of immovable property in China, such property to descend to the testator's male descendants according to the law of China; and the income thereof to be applied for the worship of the testator's "sinchew" and those of his ancestors.

The learned Chief Justice Murison in his judgment at page 145 said as follows:

> "It is clear that the rule of perpetuities is part of the law of this Colony (Singapore) and it is clear too that this gift, if it concerned property in the Colony, would be bad as infringing that rule (*Choa Choon Neo* v. *Spottiswoode* approved in *Yeap Cheah Neo* v. *Ong Cheng Neo.*) But these and similar cases all refer to a trust impressed upon property which is situated in England or in territory which is governed by the English law. In the present case we have a gift of money by a will for the purchase of land in China, the land to be conveyed to the male descendants of the deceased, and the income of the property to be applied by such male descendants to the ceremony of 'sinchew' for the benefit of the testator. The trust is impressed upon property which is situated in China. And it appears that the law in such a case is different. In *Fordyce* v. *Bridges* it was decided that if a testator bequeaths personal estate upon trust to invest it in the purchase of land in a foreign country, to be settled to limitations permitted by the law.....the fact that they are illegal by the law of England is immaterial. This case so far as I know is good law still and it is not disputed that the limitations in question are good in China."

In reply to that Mr. Chan referred me to *Duncan* v. *Lawson.*[4] He read to me the following passage from the judgment of Kay J. at page 396:

> "He gave all his real and personal property to trustees, with power to convert, and directed them to pay certain pecuniary legacies to charities in England and Scotland. And he disposed of the ultimate residue of his trust estate, on failure of his issue, among certain specified charities.
>
> The validity of these gifts, so far as they are payable out of the proceeds of English freehold or leasehold property, must depend on the *lex loci rei sitae*, which in England renders charitable gifts by will of real or leasehold property void..... The gifts of residue, so far as they failed, would be undisposed of and devolve as upon an intestacy."

And again at page 397:

> "There is no doubt as to the devolution of the English freeholds so far as undisposed of by the will. These, or the proceeds of any converted under the will, would descend as real estate, and would belong to the testator's heir-at-law at the time of his death, assuming that the testator had acquired them as a purchaser and not by inheritance: see 3 & 4 Will. 4, c. 106."

As I understand from Mr. Chan, he said that this was authority for saying that since the deceased in the present case left land, therefore the rule against perpetuities should apply, and that in the case of *Fordyce* v. *Bridges*,[5] which was followed by Murison C.J., the testator left personal estate and not land. In the case of *Duncan* v. *Lawson* the question was how leaseholds in England belonging to a domiciled Scotchman should devolve. Kay J. held in that case that the leaseholds devolved upon persons entitled under the English Statute of Distributions.

In my own view *Duncan* v. *Lawson* is merely authority for saying that leaseholds in England, belonging to a domiciled Scotchman, devolve, in the case of his intestacy, upon the persons entitled according to the English Statute of Distributions, although the learned judge did express the view that freeholds, so far as undisposed of by the will, or the proceeds of any converted under the will, would descend as real estate. This view, if correct at all, does not say that any trust in reference to such proceeds of sale should be subject to the rule against perpetuities.

In the case of *Fordyce* v. *Bridges* it is true that the deceased testator left personal property

for the purpose of his testamentary dispositions. The judgment of the court reads as follows:

"The rules acted upon by the courts in this country with respect to testamentary dispositions tending to perpetuities relate to this country only. What the law of Scotland may be upon such a subject the courts of this country have no judicial knowledge, nor will they, I apprehend, inquire: the fund being to be administered in a foreign country is payable here though the purpose to which it is to be applied would have been illegal if the administration of the fund had been to take place in this country. This is exemplified by the well-established rule in cases of bequests within the Statutes of Mortmain. A charity legacy void in this country under the Statutes of Mortmain is good and payable here if for a charity in Scotland. It is true that Scotland is in terms excluded from the operation of the statutes but that exclusion would be useless and inoperative, if the legacy would have been void, though to be administered in Scotland, merely because it would have been void if administered in England; and it would still be so, not by the effect of the statutes but by the rule of law; but such is not the law, and I think that the objection raised, upon the ground of perpetuity, cannot be maintained."

As I understand the judgment, the reason that court held the view was that the fund was to be administered according to the law of Scotland where the rule against perpetuity is unknown. It would appear to me personally, therefore, that it does not matter whether the property left is money or proceeds of sale of land in the country where the law against perpetuity applies. Unfortunately, it is not very clear from the judgment of Murison C.J., whether the testator left a wholly personal estate or partly personal and partly immovable property. In the judgment I found the following words:

"By his will the testator directed his executors to realise all his estate except his property in China and after payment of his debts, legacies and funeral expenses to divide the residue into nine equal shares....."

It would appear to me that from these words that some of the property could have been immovable property. In other words, when Murison C.J. decided the case, it was not considered relevant as to whether the property left by the deceased was movable or immovable.

For the above reasons I would say that the principle laid down in *Fordyce* v. *Bridges* and followed by Murison C.J. in the local case should apply in the present case. In other words, the objection that the trust in this case is invalid as infringing the rule against perpetuties must fail.

As to (b) — that the trust is void for uncertainty. In the clause under dispute the relevant words are "The remaining fifteen shares and the money in cash under my name shall be reserved as the ancestral property.... If and when my property is disposed of (sold), the value thereof must be remitted back to the fatherland (China) in order to form ancestral property." In this matter Mr. Jumabhoy said the court should take judicial notice of the meaning of the words "ancestral property" and the purpose of such property.

Mr. Chan, on the other hand, says these words are very vague, e.g. it is not clear whether the deceased intended that the house or land or shares in companies or padi land was intended to be purchased in China and to form the ancestral property. He referred me to para. 1399 at page 835 of Vol. 38 of *Halsbury's* Laws of England (Third Edition). That paragraph says as follows:

"The objects of persons to be benefited by a trust must be expressly designated, or so defined that they are capable of being ascertained, except where the trust is for charitable purposes. Otherwise the trust is void for uncertainty, and there is a resulting trust."

In *Ng Eng Kiat's* case there was a direction that the property was to descend to the testator's male descendants and there was a further direction that the income was to be applied for the worship of the testator's "sinchew". In other words, the objects of the trust and persons to be benefited by the trust were expressly designated.

For this reason I think the trust fails.

The next objection was that the trust failed by reason that it is impracticable of performance. Mr. Chan said that his firm had written to the Foreign Exchange Control Department on the 22nd April, 1965, and in that letter gave the relevant facts of the case, including the fact that about $48,000 had been paid into the court, and inquired from the Controller of Foreign Exchange whether or not as from 22nd January, 1946, or December, 1964, large sums of money could or could not be sent to China for the purpose stated in the deceased's will. In reply the deputy controller said as follows:

"As China is outside the Sterling Area, remittances to China would have required the prior permission of the Exchange Control as from either of the two dates stated. It is unlikely that permission would have been given for large sums of money to be transferred to China to purchase properties to form an 'ancestral property'."

So that Mr. Chan says in view of this restriction it is not practicable to carry out the wishes of the testator.

In reply Mr. Jumabhoy said that the deputy controller's statement cannot be regarded as sufficient to show that it is impracticable to send money to China. The trustees should have applied for permission to transmit the money to China, either in a lump sum or in instalments, and only if permission was refused could it be said that it is impracticable to carry out the direction of the testator.

In my view that statement by the deputy controller is sufficient to show that no permission would be given even if asked for. I do not think that the problem could be solved by asking for permission to remit the money in instalments

since the purpose for which they are to be made would still be for the purpose of purchasing properties to form an "ancestral property". I would, therefore, say that the objection on this ground would succeed.

In consequence I would, therefore, declare that the residuary estate should devolve as upon an intestacy and that, as suggested by Mr. Toh, there should be an inquiry as to who should benefit under that intestacy.

Order accordingly.

Solicitors: *Braddell Bros.; Mallal & Namazie.*

TAN GEOK LOO v. KOH BENG QUEE & ORS.

[F.C. (Tan Ah Tah Ag.C.J., Buttrose and Winslow JJ.) November 3, 1965]

[Singapore — Federal Court Civil Appeal No. 14 of 1965]

Charity — Lease for religious purposes — Whether lease created a trust or beneficial interest — Joint tenancy — Claim by adverse possession — Crown Lands Ordinance (Cap. 244), s. 8.

The appellant claimed that she had an uninterrupted possession of certain lands and premises since 1928 in circumstances whereby she acquired a title thereto by adverse possession. The lands and premises were leased to certain lessees who undertook that they would not use the premises or any part thereof other than as a place of worship. The original lessees had died and the respondents were members of the Koh Clan Association, who claimed to have had the management and control of the land and premises for the running of the temple thereon. The learned trial judge dismissed the claim of the appellant who thereupon appealed to the Federal Court.

Held: (1) the lease in this case created a trust and not a beneficial interest and the lessees held the lands and premises as joint tenants on trust for religious purposes;

(2) the appellant had not shown that she had adverse possession of the land and premises and on the facts she could never become the owner of the land and premises as she was merely the agent of the temple;

(3) the trust in this case was clearly a public trust of a charitable nature and could not fail for want of a trustee so long as the trust was capable of performance.

Cases referred to:—

(1) *Perry* v. *Clissold* [1907] A.C. 73.

(2) *Re Sassoon* [1935] A.C. 146.

FEDERAL COURT.

S. C. Chua for the appellants.

S. K. Lee for the 1st, 2nd and 3rd respondents.

Wilfred Wee Han Kim (State Counsel) for the State Advocate General.

Cur. Adv. Vult.

Winslow J.: This is an appeal from the judgment of Chua J. dated 6th January, 1965, dismissing the appellant's claim with costs and ordering vacant possession of Lots 130-1 and 130-2 in Town Sub-division III in the Island of Singapore together with the Chinese temple and buildings erected thereon and known as No. 27-A Tras Street (hereinafter referred to as "the land and premises"), in favour of the first three defendants/respondents (hereinafter referred to as "the respondents").

The plaintiff, as the appellant then was, claimed that she had been in uninterrupted possession of the said land and premises since 1928 in circumstances whereby she acquired a title thereto by adverse possession for more than twelve years. She complained of trespass on the said land and premises by the respondents "or either of them, or either of their servants or agents" on divers dates between 13th September, 1960 and 23rd April, 1961. She, therefore, claimed a declaration that they were not entitled to enter, cross, occupy or remain thereon and an injunction to restrain them, their servants or agents from doing so. She also asked for an order that the entry of the registration of an order of court dated 17th January, 1961, vesting the said land and premises in the respondents and appointing them trustees of the temple thereon be expunged from the records of the Registrar of Deeds.

The fourth defendant/respondent, the State Advocate-General, was added as a defendant by an order of court dated 24th January, 1962 in the early stages of the trial to represent any possible interests of a charitable or public nature.

The respondents resisted the appellant's claim and contended that she came to live in a hut on the said land and premises only in 1950 and never at any earlier date and that any occupation by her of any part of the said land and premises was originally a trespass. She was, however, subsequently permitted to stay in the said hut for short periods by the Koh Benevolent Association of which the respondents were members. They further contended that she had never been in occupation as owner and that she had never acquired any title by adverse possession. They also claimed that the original trustees of the temple, who were the lessees of of the said land and premises, entrusted the management of the temple originally in 1925 to two committee members of the Koh Benevolent Association, Koh Chwee Ngau and another who, subsequently, on the registration of the Singapore Koh Benevolent Association in 1936, continued to manage and control the said land and premises on behalf of the association. This association subsequently merged in 1953 with the Singapore Koh Clan Association. They, therefore, claimed on behalf of the Koh Clan Association, to have had management and control of the said land and premises without any break or opposition at least since 1936 until they were